

Right of First Refusal (ROFR)

- ROFR only applies if a vendor wins.
- “The new service provider must give [adversely affected] employees the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards” - FAA Guidance for Implementing OMB Circular No. A-76.
- If a vendor wins, HR’s responsibility is to provide the names of “adversely affected or separated employees” to the Contracting Officer for release to the winning service provider.
- The Potential Service Provider (PSP) “shall describe how they propose to secure the appropriate personnel required for the AFSS service delivery considering the size and complexity of the effort. This shall include, at a minimum, specifics on recruiting, hiring processes and practices, retraining existing staff and the schedule required to obtain the qualified personnel required to meet the service delivery requirements defined in the PWS [Performance Work Statement]. PSPs shall also address their understanding of staffing requirements defined in the PWS. PSPs shall also address their understanding of staffing requirements related to an A-76 environment.”
- “PSPs shall describe total compensation, including salaries and benefits proposed for the employees...PSPs shall describe their approach for employee retention from initial transition and through the duration of the contract.”
- The vendors’ proposals will be evaluated as to the degree to which they have provided a comprehensive, viable, substantiated, internally consistent and realistic staffing approach for recruitment and retention of employees to ensure delivery of effective services.
- An implementation plan will be developed which includes ways of facilitating a winning vendor’s ability to contact employees eligible for ROFR.

**Clarification of Right of First Refusal (ROFR)
AFSS A-76 Competition**

Q: Does Right of First Refusal apply to the Most Efficient Organization (MEO)?

A: ROFR does not apply to the MEO.

Q: Once the contract is awarded, what is the FAA's responsibility to the Service Provider (SP) regarding ROFR?

A: Within 10 days after contract award, the Contracting Officer (CO) will provide the SP a list of all Government employees who have been or will be adversely affected or separated as a result of award of the contract. The Human Resource Advisor (HRA) provides the CO with the list.

Q: Are employees with performance and/or attendance issues eligible for ROFR?

A: Yes, all adversely affected employees are eligible. The Service Provider (SP) shall give Government employees who have been or will be adversely affected or separated as a result of award of the contract the right of first refusal for employment openings under the contract in positions for which they are **qualified**, if that employment is consistent with post-Government employment conflict of interest standards.

The Screening Information Request (SIR) establishes minimum qualification criteria. However, the SP can apply additional criteria in the hiring of employees to meet the service requirements. In addition, the SP needs to make offers commensurate with the number of vacancies that exist. Therefore, a case may be presented where every affected employee does not get an offer.

Q: Clarify manager, staff, and administrative personnel's ROFR?

Q: How does ROFR apply to non-bargaining unit personnel?

A: ROFR applies to all groups of affected employees alike; there is no distinction among supervisor, administrative or operational personnel.

Q: At what point do non-operational personnel need to be recertified in order to be qualified for operational positions?

A: Section C, paragraph 4.2.2 of the Screening Information Request (SIR) states that incumbent operational personnel hired by the SP to perform work under this contract, who have maintained currency and can provide appropriate documentation, shall be considered to have met the requirements outlined in subsequent SIR paragraphs. The recommendation is to be recertified (and maintain currency) by the date of contract award because a vendor can immediately begin canvassing for personnel.

Q: Are AFSS personnel eligible for non-operational positions that the Service Provider creates that are similar to those existing in AFSSs (i.e. managerial and/or administrative type jobs)?

A: Yes, if vacancies exist in positions for which personnel are qualified.

Q: How will the Service Provider (SP) approach employees? When?

Q: Can the SP interview employees?

A: Each Potential SP (PSP) may approach this differently. The specifics cannot be released until after performance award (and only for the PSP that is awarded the contract).

The AFSS Implementation Office located in the Office of Competitive Sourcing has begun to identify the specifics of what information the Agency may make available to the SP (in accordance with the Privacy Act) to ensure the SP can meet its responsibility to extend offers for employment to the incumbent workforce in accordance with Screening Information Request (SIR) Section I.4, AMS 3.2.1.3-2 Right of First Refusal of Employment (September 2003). The particulars will be coordinated with the Flight Services Service Unit Transition Office.

The Agency is looking at ways to ensure that AFSS employees are provided information as early as possible after the performance decision is made, regarding the methods by which the winning SP will contact employees.